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REPORT
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AUTHORIZATION OF APPROPRIATIONS TO THE U.S. INTERNATIONAL TRADE COMMISSION, THE U.S. CUSTOMS SERVICE, AND THE OFFICE OF THE U.S. TRADE REPRESENTATIVE

JUNE 29, 1988.—Ordered to be printed

Mr. BENTSEN, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 2595]

The Committee on Finance reports an original bill (S. 2595). To authorize appropriations for fiscal year (FY) 1989 to the U.S. International Trade Commission, the U.S. Customs Service, the Office of the U.S. Trade Representative, and for other purposes, and recommends that the bill do pass.

I. SUMMARY

The Committee bill would authorize FY 1989 appropriations of $37,069,000 to the U.S. International Trade Commission, $1,189,862,000 to the U.S. Customs Service, and $15,393,000 to the Office of the U.S. Trade Representative.

In addition, the bill would amend section 514 of the Tariff Act of 1930 to provide a procedure for ensuring uniformity of Customs Service officers' decisions on imports.

II. GENERAL EXPLANATION

The Committee on Finance reports a bill to authorize FY 1989 appropriations to the U.S. International Trade Commission (ITC), the U.S. Customs Service, and the Office of the U.S. Trade Representative (USTR).

AUTHORIZATION OF APPROPRIATIONS TO THE OFFICE OF THE USTR (SECTION 1 OF THE BILL)

Section 141(f) of the Trade Act of 1974 (19 U.S.C. 2171(f)(1)) authorized appropriations to the Office of the USTR in such amounts as may be necessary for the purpose of carrying out its functions

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for FY 1976 through FY 1980. In the Omnibus Budget Reconciliation Act of 1987, the Congress amended this section to authorize an appropriation of $15,172,000 for fiscal year 1988.

Section 1 amends section 141(f) of the Trade Act of 1974 to authorize appropriations for FY 1989 to the Office of the USTR of $15,393,000. This represents the level of appropriations requested for the USTR in the President's budget. Section 1 further provides, as requested in the President's budget, that $1 million is to remain available until expended.

The authorization approved by the Committee represents an increase of $164,000 over the FY 1988 appropriation, reflecting increases in non-discretionary costs for personnel and rent, offset by a number of miscellaneous savings. The authorization also covers a one-time, non-recurring expenditure of $200,000 for the second phase of USTR's upgrade of its computer facility and related improvements in its capacity to protect the communication of sensitive information.

Pending trade legislation and the prospects of implementing a U.S.-Canada Free Trade Agreement, and pursuing additional negotiations thereunder, would significantly increase the responsibilities of the Office of the USTR. However, since neither eventuality is certain as of the time of the Committee's action on this authorization, the Committee has decided to support the President's request to maintain USTR at its current staffing level. However, the Committee believes that omnibus trade legislation and legislation to implement the U.S.-Canada Free Trade Agreement could, if enacted, pose a serious resource problem for the office. Should the need for additional resources arise, the Committee will consider the issue early in 1989 with a view to assuring that USTR has adequate resources to manage its new responsibilities.

AUTHORIZATION OF APPROPRIATIONS TO THE ITC (SECTION 2 OF THE BILL)

Section 330(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(1)) requires annual enactment of an authorization of appropriations for the ITC. Section 175 of the Trade Act of 1974 (19 U.S.C. 2232) requires that the estimated expenditures and proposed appropriations of the agency be included in the President's budget without revision. The ITC's appropriation for FY 1988 was $34,750,000.

Section 2 authorizes appropriations of $37,069,000 for FY 1989 to the ITC. This is the amount requested by the ITC and represents an increase of $2,319,000 over the FY 1988 appropriation for the agency. The increase is intended to cover non-discretionary cost requirements, primarily for personnel compensation and space rental.

Although the ITC's caseload has fallen in FY 1987 and 1988, the Committee believes that the likelihood of additional demands on the ITC's resources as a result of multilateral and bilateral trade negotiations and pending trade legislation justify authorizing the ITC's request to maintain its current operating levels.

AUTHORIZATION OF APPROPRIATIONS TO THE U.S. CUSTOMS SERVICE (SECTION 3 OF THE BILL)

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) requires annual enactment of an authorization of appropriations to the U.S. Custom Service. For FY 1989, the Committee bill authorizes an appropriation of $1,189,862,000. Of this total, $1,046,000,000 is allocated to salaries and expenses. This is an increase of $79,097,000 above the amount requested in the President's budget for salaries and expenses. Most of the remainder of the total authorized amount ($142,262,000) is for operations and maintenance of the air drug interdiction program, and represents the amount requested in the President's budget for that program. The bill separately authorizes $1.6 million for payment of arrearages in dues owed by the United States to the Customs Cooperation Council.

In previous recent years, the President's budget request for the Customs Service has sought to cut the Service's funding, its manpower, or both. These proposed cuts have generally been restored by the Congress and additional appropriations and personnel resources provided. This year the budget request has proposed a small increase in the Customs Service appropriation, from the FY 1988 appropriation of $1,106,000,000 to a proposed $1,109,165,000. Only $903,000 of the requested increase is for salaries and expenses.

Having reviewed the testimony submitted to it this year, the Committee is convinced that the appropriation proposed in the budget request for salaries and expenses for FY 1989 will be insufficient to allow the Service to maintain and enhance its extensive responsibilities for border enforcement and trade facilitation. In reaching this conclusion, the Committee has taken into account the argument that the needs of the Service for additional resources can be taken care of through certain projected savings and improvements in efficiency of operations brought about by the ongoing automation program. The Committee supports strongly the Service's efforts to modernize and streamline its operations through automation. However, the automated system is still many years away from full implementation, and only after further experience can a judgment be made that it will substantially stem the need for additional highly-trained Customs personnel.

The Committee is concerned about the ability of the Customs Service to carry out its varied and growing responsibilities effectively. Customs is charged with processing and facilitating a massive, and increasing, amount of legitimate international commerce. The Service projects that it will process 8.35 million formal entries of merchandise in FY 1989 (as compared to 4.64 million entries in FY 1981). Processing of carriers and persons also has substantially increased. Moreover, Customs is a border enforcement agency, charged with policing approximately 400 regulatory laws on behalf of some 40 other Federal agencies. Finally, it is a drug enforcement agency, with the greatest share of responsibility for interdiction of illicit substances at the border. The Customs Service has shifted an increasing amount of its resources to this effort, and as public con-

cern about the impact of drugs on our society increases, the role of Customs will also grow.

The Committee bill authorizes sufficient funding for a major increase in the staffing of the Customs Service, and specifically provides that 700 additional personnel will be added. In choosing this figure, the Committee agrees with the Senate Appropriations Committee, which earlier made the same recommendation. Unlike the Appropriations Committee, however, this Committee has not elected to specify that all 700 new positions be added to commercial operations. As in previous years, the Committee believes it is the normal responsibility of Customs management to determine where and in what positions personnel should be allocated.

Nevertheless, the Committee notes that it received ample testimony indicating that recent allocations of personnel by the Customs Service may have resulted in a skewing of resources toward enforcement efforts, both drug and commercial, and a slighting of staffing for commercial operations. For example, several organizations testified that the relative numbers of import specialists have fallen. As a result, these personnel, who are vital to the facilitation of legitimate commercial traffic, have become overburdened and increasingly inaccessible to the business community. Difficulty in obtaining the advice and assistance of these specialists may be hampering trade and lowering the degree of voluntary compliance with the customs laws.

For these reasons, the Committee strongly urges that the additional funding provided in this authorization be used to the greatest extent possible for commercial operations without detracting from the effectiveness of enforcement activities. The Committee notes that efforts are underway in the Congress on a new comprehensive drug bill. In the event such a bill is enacted and results in expanded resources for drug enforcement in FY 1989, there will be even greater reason for allocating the new positions authorized in the current bill to improve commercial operations.

None of the foregoing discussion should be taken as detracting from the Committee's concern about the alarming increase in drug trafficking. Customs plays a substantial role in drug interdiction efforts. Due to the growing problem of drug trafficking and drug-related crime in coastal states, the committee urges that Medord, Oregon be considered as a possible site for additional manpower.

The Committee notes that the Senate Appropriations Committee, in its report on the Treasury, Postal Service, and General Government Appropriation bill, has directed the Commissioner of Customs to report to that committee no later than 45 days from the date of enactment of that bill regarding a detailed allocation of the 700 additional personnel by categories of commercial activities and by regions, states, and ports of entry. The Committee on Finance directs that the same report be provided to it within the same timetable.

The Committee bill separately authorizes the amount of $1.6 million for payment of arrearages in U.S. dues to the Customs Cooperation Council, the international organization responsible for the Harmonized System of tariff classification and other efforts to coordinate and make consistent the customs practices of its member countries. The failure to remain current in its dues to this body jeopardizes the international prestige of the United States and its

ability to remain effective in the Council's deliberations. The Committee urges the appropriating committees of the Congress to similarly include an item providing funding for this purpose in the Customs Service appropriation for FY 1989.

In anticipation of the implementation of the U.S.-Canada Free Trade Agreement, the Committee expects the Customs Service to take particular care in developing an audit procedure and enforcement plan which will fully address the complex new responsibilities associated with new rules of origin established by the Free Trade Agreement. The Committee has a particular interest in the methodology employed by Customs for ensuring compliance with a 50 percent or higher North American direct cost of manufacturing rule of origin in the automotive sector, by those manufacturers who are generally known to be in marginal compliance with the mandated percentage. The Committee expects to be kept informed of progress on development of the plan. In general, it is expected that such a plan will include proposals governing what criteria will be considered in determining the origin of components making up automotive products, as well as the overall vehicles or parts. It is also anticipated that the Customs Service will issue a notice in the Federal Register and solicit comments from interested parties in developing the plan.

CUSTOMS UNIFORMITY (SECTION 4 OF THE BILL)

Section 4 of the Committee bill provides a procedural mechanism for ensuring uniformity of Customs decisions on the initial appraisement, classification, valuation and duty assessment of merchandise entering the U.S. customs territory. The purpose of this provision is to curb the practice of "port shopping" to achieve more favorable treatment of imports. Inconsistent decisions lead to the assessment of different duties or application of different treatment to identical or substantially similar merchandise at different Customs ports or districts. Importers and shippers are biased toward those ports in which Customs will give the most favorable and lenient treatment. The Committee received evidence that the current administrative system of challenging Customs decisions by way of filing a protest is insufficient to provide uniformity on a timely and ongoing basis.

The bill would amend section 514 of the Tariff Act of 1930 to provide a new procedure. On petition by an importer, customs broker or port authority, the Commissioner of Customs would be required to reconcile inconsistent decisions within 10 working days. If a determination is not made by Customs within the 10-day period, each regional district and area director will be required to apply to the merchandise the relevant decision that results in the lowest applicable rate of duty on the merchandise. Determinations of the Commissioner of Customs would be appealable to the U.S. Court of International Trade.

III. Vote of the Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the bill was ordered favorably reported without objection.

IV. Budgetary Impact of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974 and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the cost and budgetary impact of the bill. The bill would authorize the enactment of new budget authority for FY 1989 for the U.S. International Trade Commission in the amount of $37,069,000; $1,189,862,000 for the U.S. Customs Service; and $15,393,000 for the Office of the U.S. Trade Representative. The Committee has not received a report of the Congressional Budget Office under section 403 of the Congressional Budget Act regarding this bill, and therefore states that it is impracticable to comply fully with the requirements of rule 11(a). This report, however, will be submitted to the Senate as soon as it is received.

V. Regulatory Impact of the Bill

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the Committee bill will not regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no additional paperwork. The bill authorizes continued funding of three Federal agencies without substantially modifying the law governing their operations.

VI. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

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UNITED STATE CODE ANNOTATED

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TITLE 19—CUSTOMS DUTIES

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CHAPTER 4—TARIFF ACT OF 1930

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PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

§ 1330. Organization of Commission

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(c) AUTHORIZATION OF APPROPRIATIONS.—

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(2) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year [1988] *1989* not to exceed [$35,386,000] *$37,069,000*; of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

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§ 1514. Protest against decision of appropriate customs officer

(a) FINALITY OF DECISIONS; RETURN OF PAPERS.—Except as provided in subsection (b) *or (c)* of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties), section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud), decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

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(e) INCONSISTENT DECISIONS.—(1) Notwithstanding any other provision of this section, or of section 515, any decision described in subsection (a) that is inconsistent with any other decision made by a customs officer in any district or port of entry with respect to the same, or substantially similar, merchandise shall be immediately reviewed and reconciled by the Commissioner of Customs.

(2)(A) Any importer, customs broker, or port authority may submit a written petition to the Commissioner of Customs requesting immediate review of any inconsistent decisions under paragraph (1).

(B) The Commissioner of Customs, within the 10-day period (excluding Saturdays, Sundays, and legal holidays) beginning on the date on which a petition is filed with the Commissioner of Customs, shall—

(i) make a determination which reconciles the inconsistency between the inconsistent decisions of customs officers that are the subject of the petition, and

(ii) provide written notice of such determination to the regional commissioners of customs, the district and area directors of each customs region, and to the petitioner.

(C) If the Commissioner of Customs fails to make a determination with respect to a petition filed under subparagraph (A) within the 10-day period described in subparagraph (A), each regional commissioner of customs and each district and area director shall apply the decision involved in the petition that results in the lowest applicable rate of duty on the merchandise.

(3) Determinations made by the Commissioner of Customs under this subsection shall be final and conclusive upon all persons unless

a civil action contesting such determination is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28, United States Code, within the time prescribed by section 2636 of such title.

(4) The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection.

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CHAPTER 10—CUSTOMS SERVICE

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§ 2075. Customs Service appropriations authorization

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(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) FOR NONCOMMERCIAL OPERATIONS.—[There are authorized to be appropriated for fiscal year 1988 not to exceed $348,192,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which $171,857.06 shall be available only for concluding Contract TC-82-54 that was awarded for the development and testing of an automatic license plate reader.] *There are authorized to be appropriated for fiscal year 1989, not to exceed $394,000,000 for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations.*

(2) FOR COMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year [1988] *1989* not to exceed [$615,000,000] *$652,000,000* from the Customs User Fee Account for the salaries and expenses of the United States Customs Service that are incurred in commercial operations.

(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for fiscal year [1988] *1989* not to exceed [118,309,000] *$142,262,000* for the operation (including salaries and expenses) and maintenance of the air interdiction program of the United States Customs Service.

(4) CUSTOMS COOPERATION COUNCIL.—There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 1989, $1,600,000 for payment to the Customs Cooperation Council.

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(g)(1) * * *

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(3) The total number of employees of the United States Customs Service shall be equivalent to at least 16,799 full-time employees.

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CHAPTER 12—TRADE ACT OF 1974

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§ 2171. Structure, functions, powers, and personnel

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(f) AUTHORIZATION OF APPROPRIATIONS.—(1)(A) There are authorized to be appropriated for fiscal year [1988] *1989* to the Office for the purposes of carrying out its functions not to exceed [$15,172,000] *$15,393,000.*

(B) Of the amounts authorized to be appropriated under subparagraph (A) for fiscal year [1988] *1989*—

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